

STATE PERSONNEL BOARD CALENDAR



FEBRUARY 23, 2005

SACRAMENTO, CALIFORNIA

State of California

Memorandum

DATE: February 11, 2005
TO: ALL INTERESTED PARTIES
FROM: STATE PERSONNEL BOARD - Appeals Division

SUBJECT: Notice and Agenda for the **February 23, 2005**, meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on February 23, 2005, at the office of the State Personnel Board, located at 801 Capitol Mall, Room 150, Sacramento, California, the State Personnel Board will hold its regularly scheduled meeting. Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 W. 4th Street, Los Angeles, CA.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the January 25, 2005, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, CA 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:

<http://www.spb.ca.gov/calendar.htm>

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.

S. RODRIGUEZ
Secretariat's Office

Attachment

CALIFORNIA STATE PERSONNEL BOARD MEETING¹

801 Capitol Mall
Sacramento, California

Teleconference

320 West 4th Street², Suite 620
Los Angeles, California

Public Session Location

801 Capitol Mall, Room 150
Sacramento, California

Closed Session Location

801 Capitol Mall, Room 141
Sacramento, California

MID-MONTH BOARD MEETING - FEBRUARY 23, 2005

¹ Sign Language Interpreter will be provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

² Pursuant to Government Code section 11123, a teleconference location may be conducted for this meeting at 320 W. 4th Street, Los Angeles, CA.

MID-MONTH BOARD MEETING AGENDA³

FEBRUARY 23, 2005

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(9:00 a.m. - 10:00 a.m.)

- 1. ROLL CALL**
- 2. REPORT OF THE EXECUTIVE OFFICER - Floyd D. Shimomura**
- 3. REPORT OF THE CHIEF COUNSEL - Elise Rose**
- 4. NEW BUSINESS**
- 5. REPORT ON LEGISLATION - Sherry Hicks**

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(10:00 a.m. - 11:00 a.m.)

- 6. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY THE ADMINISTRATIVE LAW JUDGES**

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code sections 11126 (d), and 18653 (2).]

- 7. PENDING LITIGATION**

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration, California Supreme Court Case No. S119498.

³ The Agenda for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

State Personnel Board v. California State Employees Association, California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court Case No. S125502.

International Union of Operating Engineers v. State Personnel Board, Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA, Sacramento Superior Court No. 04CS00049.

8. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the Legislature. [Government Code section 18653.]

9. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor. [Government Code section 18653.]

10. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126 (d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(11:00 a.m. onwards)

11. DISCUSSION OF COMING BOARD MEETING SCHEDULE OF MARCH 8-9, 2005, IN SACRAMENTO, CALIFORNIA

BOARD ACTIONS

12. ACTION ON SUBMITTED ITEMS

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

(See Agenda - Page 15)

13. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

DANNY BOYD, CASE NO. 03-1537PA

Appeal from dismissal
Youth Correctional Officer
Department of Youth Authority

JENNIFER CADY, CASE NO. 03-3390EA

Appeal from denial of request for reasonable accommodation
Deputy Attorney General IV
Department of Justice

SHARON COHEN, CASE NO. 03-3389EA

Appeal from denial of request for reasonable accommodation
Deputy Attorney General IV
Department of Justice

JOHN A. CRUZ, CASE NO. 04-1376A

Appeal from 60-calendar-days suspension
Automotive Equipment Operator I
California Department of Veterans Affairs

NESSLIN CRUZ, CASE NO. 03-1854A

Appeal from ten-work-days suspension
Employment Program Representative
(Permanent/Intermittent)
Employment Development Department

JOHN FLORES, CASE NO. 03-2588EA

Appeal of retaliation
Hospital Peace Officer I
Department of Mental Health

HAJI JAMEEL, CASE NO. 04-0330A

Appeal from dismissal
Supervising Transportation Engineer
California Public Utilities Commission

JOE W. JORDAN, CASE NO. 04-0393A

Appeal from dismissal
Youth Correctional Counselor
Department of Youth Authority

SAMUEL SWEENEY, CASE NO. 04-0794A

Appeal from 20-calendar-days suspension
Correctional Officer
California Institution for Men – Chico
Department of Corrections

B. CASES PENDING

Oral Arguments

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

None

C. CHIEF COUNSEL RESOLUTIONS

None

Court Remands

These cases have been remanded to the Board by the court for further Board action.

None

Stipulations

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

None

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

Proposed Decisions

These are ALJ proposed decisions submitted to the Board for the first time.

JIM ALOMARI, CASE NO. 04-2734

Appeal from Official Reprimand
Correctional Sergeant
Department of Corrections

JESUS FLORES, CASE NO. 04-1662

Appeal from suspension for 25 workdays
Groundswoker
California State University, Los Angeles

MARY C. FORD, CASE NO. 04-0325

Appeal from 15 days' suspension
Correctional Officer
Department of Corrections

PAUL FUENTES, CASE NO. 04-2252

Appeal from ten percent reduction in salary for twelve months
Correctional Officer
Department of Corrections

JONADAB HERRERA , CASE NO. 04-2246

Appeal from five working days' suspension
Custodian
San Jose State University, San Jose

DENNIS KROMANN, CASE NO. 04-1747E

Appeal from discrimination and retaliation complaint while seeking
permissive reinstatement
Medical Technical Assistant (Correctional Facility)
Department of Corrections

CAMERON LANE, CASE NO. 04-1859

Appeal from formal reprimand
Correctional Officer
Department of Corrections

APRIL NICHOLS, CASE NO. 04-1955E

Appeal from denial of request for reasonable accommodation
Employment Program Representative
Employment Development Department

HENDRICKS ONWUAZO, CASE NOS. 02-0016 and 02-1087E

Appeal from 15 working days suspension
Transportation Engineer (Civil)
Department of Transportation

GEORGE SMITH-LEGERE, CASE NO. 04-1504

Appeal from suspension for 30 workdays
Correctional Sergeant
Department of Corrections

CHARLES VILLATORO, CASE NO. 04-2039

Appeal from five percent reduction in salary for six months
Correctional Officer
Department of Corrections

AUDREY S. WHITMAN, CASE NO. 04-0880

Appeal from 60 working days' suspension
Correctional Officer
Department of Corrections

Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

None

Proposed Decisions After Board Remand

None

Proposed Decisions After SPB Arbitration

MICHAEL GLANVILLE, CASE NO. 04-2539

Five-day suspension
CHP Officer
California Highway Patrol

AND

JAMES HENDRIX, CASE NO. 04-2538

Five-day suspension
CHP Officer
California Highway Patrol

E. PETITIONS FOR REHEARING

ALJ Proposed Decisions Adopted By The Board

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

ARTHUR RIVERA, CASE NO. 04-1278PA

Appeal from dismissal
Correctional Supervising Cook
North Kern State Prison
Department of Corrections
Petition for rehearing filed by appellant to be granted or denied.

Whistleblower Notice of Findings

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

None

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

None

14. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION

(See Agenda - Pages 16-17)

15. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

LESLIE ACOSTA, CASE NO. 04-0696

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; omitted pertinent information and furnished inaccurate information.

HERBERT CANAYA, CASE NO. 04-0038

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; omitted pertinent information.

ANGEL CASTRO, CASE NO. 04-0674

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; conviction record, negative driving record, furnished inaccurate information during the selection process.

AMY CHRISTOPHER, CASE NO. 04-0592

Classification: Medical Technician Assistant

Department: Corrections

Issue: Suitability; illegal drug use.

CUONG CHU, CASE NO. 04-0590

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; furnished inaccurate information and omitted pertinent information during the selection process, has an arrest/conviction record, and has negative law enforcement contacts.

MARIO CORONA, CASE NO. 04-0333

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; furnished inaccurate information and omitted pertinent information during the selection process, has a negative driver's record, and failed to comply with legal obligations.

DEMARCO EMERY, CASE NO. 04-0046

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; omitted pertinent information.

LETICIA FUNEZ, CASE NO. 04-0218

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; omitted pertinent information and negative employment record.

CHRISTOPHER MIDKIFF, CASE NO. 04-0305

Classification: Correctional Officer

Department: Corrections

Issue: Suitability; furnished inaccurate information and omitted pertinent information during the selection process, negative driver's record, and failed to comply with legal obligations.

JEROME PIRRO, CASE NO. 04-0454

Classification: Correctional Officer

Department: Corrections

Issue: Suitability, furnished inaccurate information and omitted pertinent information during the selection process and a negative military record.

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

None

**C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS**

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

None

**D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS**

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

None

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

None

PETITIONS FOR REHEARING CASES

LYNNELLE CASE - CASE NO. 02-0357P

Department: Consumer Affairs

Issue: The appellant filed the Petition for Rehearing claiming factual findings were made or omitted in error.

F. PSYCHOLOGICAL SCREENING CASES – No Hearing

Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

TIMOTHY LOVATO - CASE NO. 05-0014

Classification: Cadet, CHP

Department: California Highway Patrol

Issue: The appellant was initially psychologically disqualified for the position.

16. NON-HEARING CALENDAR

The following proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It is anticipated that the Board will act on these proposals without a hearing.

Anyone with concerns or opposition to any of these proposals should submit a written notice to the Executive Officer clearly stating the nature of the concern or opposition. Such notice should explain how the issue in dispute is a merit

employment matter within the Board's scope of authority as set forth in the State Civil Service Act (Government Code section 18500 et seq.) and Article VII, California Constitution. Matters within the Board's scope of authority include, but are not limited to, personnel selection, employee status, discrimination and affirmative action. Matters outside the Board's scope of authority include, but are not limited to, compensation, employee benefits, position allocation, and organization structure. Such notice must be received not later than close of business on the Wednesday before the Board meeting at which the proposal is scheduled. Such notice from an exclusive bargaining representative will not be entertained after this deadline, provided the representative has received advance notice of the classification proposal pursuant to the applicable memorandum of understanding. In investigating matters outlined above, the Executive Officer shall act as the Board's authorized representative and recommend the Board either act on the proposals as submitted without a hearing or schedule the items for a hearing, including a staff recommendation on resolution of the merit issues in dispute.

- a. The State Teachers' Retirement System (STRS) requests establishment of a new managerial class entitled Portfolio Manager, STRS, with a 12-month probationary period.

17. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

None

18. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation

Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board

Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

CHIEF ASSISTANT GENERAL MANAGER

The Prison Industry Authority proposes to allocate the above position to the CEA category. The Chief Assistant General Manager formulates and administers all planning, financial, personnel, marketing, and information systems policies and procedures department-wide in the central office location and for field office staff located in 22 correctional institutions throughout the State of California.

SPECIAL ASSISTANT ATTORNEY GENERAL CONSUMER PROTECTION AND FRAUD PREVENTION

The Department of Justice proposes to allocate the above position to the CEA category. The Special Assistant Attorney General Consumer Protection and Fraud Prevention will develop and propose policy initiatives in such consumer-related subject areas as medical care and costs, health fraud, credit practices, automobile sales and financing, issues affecting the under represented, investment fraud and other emerging areas of consumer concern.

DEPUTY DIRECTOR COMPLIANCE DIVISION

The California Gambling Control Commission proposes to allocate the above position to the CEA category. The Deputy Director Compliance Division administers the compliance activities, including the gaming device testing laboratory and field-testing of the Commission, as well as oversees the fiduciary responsibilities associated with the Indian Gaming Revenue Sharing Trust Fund, the Indian Gaming Special Distribution Fund and tribal gaming revenues that are deposited into the General Fund.

DEPUTY DIVISION CHIEF BENEFITS DIVISION

The Department of Personnel Administration proposes to allocate the above position to the CEA category. The Deputy Division Chief Benefits Division has a significant role in the formulation and development of

policies with statewide impact regarding the State's benefit programs, and in developing and presenting proposals for collective bargaining.

**B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
ESTABLISH NEW CEA POSITIONS**

None

- 19. WRITTEN STAFF REPORT FOR BOARD INFORMATION**
- 20. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY**

A D J O U R N M E N T

SUBMITTED

TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

HEARING - PSC #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *